

REMARKS

Claims 1-16 are pending. The Office Action dated February 7, 2008 in this Application has been carefully considered. The above amendments and the following remarks are presented in a sincere attempt to place this Application in condition for allowance. Claims 10, 15, and 16 have been amended in this Response. Reconsideration and allowance are respectfully requested in light of the above amendments and following remarks.

Applicant thanks the Examiner for the courtesy of an interview conducted on April 30, 2008. During the interview the above amendments and following remarks were discussed. Applicant's representative and the Examiner generally discussed the Bly reference (US 2004/0042399) and the claims of the invention. However, tentative agreement was not reached that such amendments patentably distinguish from the art currently of record. Since the Examiner wished to expedite examination following completion of any additional search, the Examiner is invited to contact the undersigned to discuss any issues raised or remaining.

Claims 15-16 stand objected by the Examiner. Applicant thanks the Examiner for his suggestions and has corrected the identified Claims accordingly

Claim 10 stands rejected under 35 U.S.C. §112, second paragraph, as allegedly indefinite. Specifically, regarding Claim 10, the Examiner asserts that the phrase "can" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. Office Action, Page 2. Applicant has now removed the limitation "can" from Claim 10. Applicant therefore respectfully submits that the rejection of Claim 10 and its dependent Claim under Section 112, second paragraph, has been overcome. Accordingly, Applicant respectfully requests that the rejections under 35 U.S.C. §112, second paragraph, be withdrawn.

Claims 15-16 stand rejected under 35 U.S.C. §101 on the grounds the claimed invention is directed to non-statutory subject matter. Specifically, regarding Claims 15-16, the Examiner asserts that the program product is non statutory subject matter because it can be a piece of paper or software. Office Action, Page 2. Applicant has amended Claims 15-16 to recite, in relevant part, “the computer program product having a computer readable medium with a computer program embodied thereon.” (Emphasis added). Applicant therefore respectfully submits that the rejection of Claims 15-16 under Section 101 has been overcome. Accordingly, Applicant respectfully requests that the rejections under 35 U.S.C. §101 be withdrawn.

Claims 10 and 11 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Publication No. 20040042399 to Bly et al. (“Bly”). In light of the amendments submitted herewith, Applicant respectfully submits that the rejections have been overcome. Accordingly, Applicant respectfully request that the rejection be withdrawn.

Rejected independent Claim 10, as now amended, more particularly recites one of the distinguishing characteristics of the present invention, namely, “BMC (Bandwidth Management Controller) operable to distribute base tokens for an authorized minimum BW to said load shaper...” (Emphasis added.) Support for this Amendment can be found, among other places, page 6, lines 1-24 of the originally filed Application. Here, Bly was cited as assertedly fully disclosing all the limitations of Claim 10. However, Bly does not appear to teach, disclose, or suggestion, distributing base tokens for *an authorized BW* to the load shaper. In view of the foregoing, it is apparent that the cited reference does not teach the unique combination now recited in amended Claim 10. Applicant therefore submits that amended Claim 10 is clearly and precisely distinguishable over the cited reference in a patentable sense, and is therefore allowable over this reference and the remaining references of record. Accordingly, Applicant respectfully requests that

the rejection of amended Claim 10 under 35 U.S.C. § 102(e) to Bly be withdrawn and that Claim 10 be allowed.

Claim 11 depends from and further limits Claim 10. Hence, for at least the aforementioned reasons that Claim 10 should be deemed to be in condition for allowance, Claim 11 should be deemed to be in condition for allowance. Applicant respectfully requests that the rejection of dependent Claim 11 also be withdrawn.

Claims 1 and 2 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Bly in view of U.S. Patent No. 6,553,568 to Fijolek et al. ("Fijolek"). Insofar as the references may be applied against the Claims this rejection is traversed. Accordingly, Applicant respectfully requests that the rejection be withdrawn.

Regarding Claim 1, Bly and Fijolek were cited as allegedly disclosing the limitations of the Claim. In particular, the Examiner cites Bly (Fig. 4, 50 BW allocation table) as assertedly disclosing the limitation of a BMC operable to maintain a table of BW authorized for a class. Here, it is unclear from Fig. 4 how the allocation table includes bandwidth authorized for a class. Fig. 4 of Bly merely appears to show a bandwidth allocation table linked to a shaping engine. Applicant's representative further noted this distinction during the interview with the Examiner. Here, the Examiner has not provided a proper mapping of this limitation. In view of the foregoing, it is apparent that the cited references do not teach the unique combination Claim 1. Applicant therefore submits that amended Claim 1 is clearly and precisely distinguishable over the cited references in a patentable sense, and is therefore allowable over these references and the remaining references of record. Accordingly, Applicant respectfully requests that the rejection of amended Claim 1 under 35 U.S.C. § 103(a) to Bly and Fijolek be withdrawn and that Claim 1 be allowed.

Claim 2 depends from and further limits Claim 1. Hence, for at least the aforementioned reasons that Claim 1 should be deemed to be in condition for allowance, Claim 2 should be deemed to be in condition for allowance. Applicant respectfully requests that the rejection of dependent Claim 2 also be withdrawn.

Claims 3, 4, and 7 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Bly in view of U.S. Patent No. 7,006,440 to Agrawal et al. ("Agrawal"). Insofar as the references may be applied against the Claims, this rejection is traversed. Accordingly, Applicant respectfully requests that the rejection be withdrawn.

Regarding Claim 3, Bly and Agrawal were cited as allegedly disclosing the limitations of Claim 3. In particular, the Examiner cites Bly, in paragraph [0043] as assertedly disclosing the limitation of the request being for at least one additional transmission token from a centralized controller having access to said compilation of information. However, it is unclear how paragraph [0043] of Bly teaches, discloses, or suggests *a centralized controller* having access to the *compilation of information*. Further, the Examiner cites Bly in paragraphs [0028]-[0029] as assertedly disclosing the limitation of providing additional transmission tokens, as requested, for each authorized class up to the total minimum BW and presently allowable standby BW. However, neither paragraphs [0028] nor [0029] appear to teach this limitation. For example, paragraph [0029] discloses that a "minimum rate is defined by one credit divided by the table traversal time...maximum rate is defined by maximum number of entries...divided by the table traversal time." Hence, it is unclear how this mapping teaches, discloses, or suggests providing additional transmission tokens for each *authorized class* up to the total *minimum BW and presently allowable standby BW*. Accordingly, Applicant respectfully request the Examiner to withdraw this rejection.

Regarding Claim 7, Bly and Agrawal were cited as allegedly disclosing the limitations of the Claim. In particular, the Examiner cited Agrawal as assertedly disclosing the limitation of shaper means for comparing payload class against class restriction status. Agrawal, Fig. 5, 92. However, it is unclear from Fig. 5, particularly shaper '92', as cited by the Examiner, teaches, suggests, or discloses the limitation of comparing a payload class against class restriction status. Hence, the Examiner has not provided a proper mapping of this limitation. Accordingly, Applicant respectfully requests the Examiner to withdraw this rejection.

Claim 4 depends from and further limits Claim 3. Hence, for at least the aforementioned reasons that Claim 3 should be deemed to be in condition for allowance, Claim 4 should be deemed to be in condition for allowance. Applicant respectfully requests that the rejection of dependent Claim 4 also be withdrawn.

In view of the foregoing, it is apparent that the cited references do not teach the unique combination Claims 3, 4, and 7. Applicant therefore submits that Claims 3, 4, and 7 are clearly and precisely distinguishable over the cited references in a patentable sense, and are therefore allowable over these references and the remaining references of record. Accordingly, Applicant respectfully requests that the rejection of Claims 3, 4, and 7 under 35 U.S.C. § 103(a) to Bly and Agrawal be withdrawn and that Claims 3, 4, and 7 be allowed.

Claims 5 and 16 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Bly in view of Agrawal, in further view of U.S. Patent No. 6,570,847 to Hosein et al. ("Hosein"). Insofar as the references may be applied against the Claims, this rejection is traversed. Accordingly, Applicant respectfully requests that the rejection be withdrawn.

Regarding Claims 5 and 16, Bly, Agrawal, and Hosein were cited as allegedly disclosing the limitations of Claims 5 and 16. In particular, the Examiner cited Bly as assertedly fully disclosing

the limitation of providing separate data path transmission queues of source data packets, within each of a plurality of multiplexed communication path queue managers for best efforts data packets and each separately identified and authorized class of managed data source, the BW of each class being centrally controlled. However, it is unclear how paragraphs [0038], [0016], and [0028], as cited by the Examiner, teach the unique *combination of best efforts data packets and authorized class of managed data sources* and further the BW of each class being *centrally controlled*. Further, the Examiner cited Bly as disclosing managing bandwidth allowed in a given operational time period by supplying an additional class specific token from a BMC to a requesting path queue manager to replace a given class token used by said path queue manager when placing a managed source data packet in queue for transmission. However, it is unclear how paragraph [0042]-[0044] teach replacing a given class token used by said path queue manager. Paragraphs [0042]-[0044] merely disclose reading an entry “from the bandwidth allocation table”, “the amount of credit [being] listed in the read entry”, or “credit is added”. Hence, the Examiner has not provided a proper mapping of this limitation. In view of the foregoing, it is apparent that the cited references do not teach the unique combination of Claims 5 and 16. Applicant therefore submits that Claims 5 and 16 are clearly and precisely distinguishable over the cited references in a patentable sense, and are therefore allowable over these references and the remaining references of record. Accordingly, Applicant respectfully requests that the rejection of Claims 5 and 16 under 35 U.S.C. § 103(a) to Bly, Agrawal, and Hosein be withdrawn and that Claims 5 and 16 be allowed.

Claims 6, 8, and 9 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Bly in view of Hosein. Insofar as the references may be applied against the Claims, this rejection is traversed. Accordingly, Applicant respectfully requests that the rejection be withdrawn.

Regarding Claim 6, Bly and Hosein were cited as allegedly disclosing the limitations of the Claim. In particular, Bly was cited as assertedly disclosing the limitation of class specific queueing means, comprising a part of at least some of said load shaper means, for requesting replacement class specific token. Bly, paragraph [0030]. However, it is unclear how paragraph [0030] of Bly specifically teaches requesting a replacement class specific token. Hence, the Examiner has not provided a proper mapping of this limitation. Accordingly, Applicant respectfully requests the Examiner to withdraw this rejection.

Regarding Claim 8, Bly and Hosein were cited as allegedly disclosing the limitations of the Claim. In particular, Bly was cited as assertedly disclosing the limitation of maintaining a table of base and standby BWs available for each of a plurality of managed source classed. Bly, Fig. 6. However, Fig.6 of Bly, as cited by the Examiner, does not appear to disclose a table of base and standby BWs; but rather “a table based credit allocation scheme”. Bly, para. [0011]. Hence, the Examiner has not provided a proper mapping of this limitation. Accordingly, Applicant respectfully requests the Examiner to withdraw this rejection.

Claim 9 depends from and further limits Claim 8. Hence, for at least the aforementioned reasons that Claim 8 should be deemed to be in condition for allowance, Claim 9 should be deemed to be in condition for allowance. Applicant respectfully requests that the rejection of dependent Claim 9 also be withdrawn.

In view of the foregoing, it is apparent that the cited references do not teach the unique combination of Claims 6, 8, and 9. Applicant therefore submits that Claims 6, 8, and 9 are clearly and precisely distinguishable over the cited references in a patentable sense, and are therefore allowable over this reference and the remaining references of record. Accordingly, Applicant

respectfully requests that the rejection of Claims 6, 8, and 9 under 35 U.S.C. § 103(a) to Bly and Hosein be withdrawn and that Claims 6, 8, and 9 be allowed.

Claims 12, 13, and 15 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Bly in view of U.S. Patent No. 7,224,671 to Lee et al. (“Lee”). Insofar as the references may be applied against the Claims, this rejection is traversed. Accordingly, Applicant respectfully requests that the rejection be withdrawn.

Applicant contends that the rejection of Claims 12 and 15 are traversed for at least some of the reasons that the rejection of Claims 5 and 16 are traversed. These reasons include Bly not disclosing, teaching, or suggesting “requesting an additional replacement token from a centralized token source.” (Emphasis added.) Applicant therefore respectfully submits that Claims 12 and 15 are clearly and precisely distinguishable over the cited references in any combination.

Claim 13 depends from and further limits Claim 12. Hence, for at least the aforementioned reasons that Claim 12 should be deemed to be in condition for allowance, Claim 13 should be deemed to be in condition for allowance. Applicant respectfully requests that the rejection of dependent Claim 13 also be withdrawn.

In view of the foregoing, it is apparent that the cited references do not teach the unique combination of Claims 12, 13, and 15. Applicant therefore submits that Claims 12, 13, and 15 are clearly and precisely distinguishable over the cited references in a patentable sense, and are therefore allowable over these references and the remaining references of record. Accordingly, Applicant respectfully requests that the rejection of Claims 12, 13, and 15 under 35 U.S.C. § 103(a) to Bly and Lee be withdrawn and that Claims 12, 13, and 15 be allowed.

Claim 14 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Agrawal in view of Hosein, in further view of Lee. Insofar as the references may be applied against the Claims,

this rejection is traversed. Accordingly, Applicant respectfully requests that the rejection be withdrawn.

Regarding Claim 14, Agrawal, Hosein, and Lee were cited as allegedly disclosing the limitations of the Claim. In particular, Agrawal was cited as assertedly disclosing the limitation of assigning a unique class identity and a designated allowable BW from said assignment entity. Agrawal, Col 5. lines 18-22, Col. 5, lines 28-37. However, it is unclear how Agrawal in Col. 5, lines 28-37 teaches assigning a *designated allowable BW* from the *assignment entity*. Hence, the Examiner has not provided a proper mapping of this limitation. Accordingly, Applicant respectfully requests that the rejection be withdrawn.

In view of the foregoing, it is apparent that the cited references do not teach the unique combination of Claim 14. Applicant therefore submits that Claim 14 is clearly and precisely distinguishable over the cited references in a patentable sense, and is therefore allowable over these references and the remaining references of record. Accordingly, Applicant respectfully requests that the rejection of Claim 14 under 35 U.S.C. § 103(a) to Agrawal, Hosein, and Lee be withdrawn and that Claim 14 be allowed.

Applicant has now made an earnest attempt to place this Application in condition for allowance. For the foregoing reasons and for other reasons clearly apparent, Applicant respectfully requests full allowance of Claims 1-16.

Applicant does not believe that any fees are due; however, in the event that any fees are due, the Director is hereby authorized to charge any required fees due (other than issue fees), and to credit any overpayment made, in connection with the filing of this paper to Deposit Account No. 50-0605 of CARR LLP

ATTORNEY DOCKET NO.
AUS920030611US1 (IBM 2776000)

PATENT APPLICATION
SERIAL NO. 10/674,977

Should the Examiner deem that any further amendment is desirable to place this application in condition for allowance, the Examiner is invited to telephone the undersigned at the number listed below.

Respectfully submitted,

CARR LLP

Dated: May 7, 2008
CARR LLP
670 Founders Square
900 Jackson Street
Dallas, Texas 75202
Telephone: (214) 760-3030
Fax: (214) 760-3003

/Gregory W. Carr/
Gregory W. Carr
Reg. No. 31,093